

HOUSE BILL NO. 424

INTRODUCED BY D. BARRETT

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA STREAM ACCESS LAW BY  
5 REQUIRING THE FISH, WILDLIFE, AND PARKS COMMISSION TO IDENTIFY AND MARK ALL PUBLIC  
6 ACCESS SITES TO SURFACE WATERS TO WHICH THE PUBLIC HAS THE RIGHT OF RECREATIONAL USE,  
7 TO ASSESS THE IMPACT OF RECREATIONAL USE OF SURFACE WATERS ON FISH AND WATER  
8 QUALITY PURSUANT TO THE MONTANA ENVIRONMENTAL POLICY ACT, AND TO PROVIDE AN ANNUAL  
9 REPORT TO THE LEGISLATURE REGARDING STREAM ACCESS ENFORCEMENT ISSUES; AMENDING  
10 SECTION 23-2-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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14 **Section 1.** Section 23-2-302, MCA, is amended to read:  
15 **"23-2-302. Recreational use permitted -- limitations -- exceptions.** (1) Except as provided in  
16 subsections (2) through (5), all surface waters that are capable of recreational use may be so used by the public  
17 without regard to the ownership of the land underlying the waters.  
18 (2) The right of the public to make recreational use of surface waters does not include, without  
19 permission or contractual arrangement with the landowner:  
20 (a) the operation of all-terrain vehicles or other motorized vehicles not primarily designed for operation  
21 upon the water;  
22 (b) the recreational use of surface waters in a stock pond or other private impoundment fed by an  
23 intermittently flowing natural watercourse;  
24 (c) the recreational use of waters while diverted away from a natural water body for beneficial use  
25 pursuant to Title 85, chapter 2, part 2 or 3, except for impoundments or diverted waters to which the owner has  
26 provided public access;  
27 (d) big game hunting except by long bow or shotgun when specifically authorized by the commission;  
28 (e) overnight camping within sight of any occupied dwelling or within 500 yards of any occupied dwelling,  
29 whichever is less;  
30 (f) the placement or creation of any permanent duck blind, boat moorage, or any seasonal or other

1 objects within sight of or within 500 yards of an occupied dwelling, whichever is less; or

2 (g) use of a streambed as a right-of-way for any purpose when water is not flowing ~~therein~~ in the  
3 streambed.

4 (3) The right of the public to make recreational use of class II waters does not include, without permission  
5 of the landowner:

6 (a) big game hunting;

7 (b) overnight camping;

8 (c) the placement or creation of any seasonal object; or

9 (d) other activities ~~which~~ that are not primarily water-related pleasure activities as defined in  
10 23-2-301(10).

11 (4) The right of the public to make recreational use of surface waters does not grant any easement or  
12 right to the public to enter onto or cross private property in order to use ~~such~~ surface waters for recreational  
13 purposes.

14 (5) The commission shall adopt rules pursuant to 87-1-303, in the interest of public health, public safety,  
15 or the protection of public and private property, governing recreational use of class I and class II waters. These  
16 rules must include the following:

17 (a) the establishment of procedures by which any person may request an order from the commission:

18 (i) limiting, restricting, or prohibiting the type, incidence, or extent of recreational use of a surface water;

19 or

20 (ii) altering limitations, restrictions, or prohibitions on recreational use of a surface water imposed by the  
21 commission;

22 (b) provisions requiring the issuance of written findings and a decision whenever a request is made  
23 pursuant to the rules adopted under subsection (5)(a); and

24 (c) a procedure for the identification of streams within class II waters ~~which~~ that are not capable of  
25 recreational use or are capable of limited recreational use, and a procedure to restrict the recreational use to the  
26 actual capacity of the water.

27 (6) The commission shall:

28 (a) identify and mark all legal public access sites to surface waters to which the public has the right to  
29 make recreational use pursuant to this part;

30 (b) assess the impact of the recreational use of surface waters on fish and water quality pursuant to the

1 Montana Environmental Policy Act; and

2 (c) provide an annual report to the legislature concerning enforcement issues that arose during the  
3 preceding year related to the use of public access sites by landowners and recreationists, including but not limited  
4 to trespass and interference with right-of-way.

5 ~~(6)(7)~~ The provisions of this section do not affect any rights of the public with respect to state-owned  
6 lands that are school trust lands or any rights of lessees of ~~such~~ school trust lands."

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8 NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

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